



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Bill Hutton, Treasurer
Kansas Democratic Party
P.O. Box 1914
Topeka, Kansas 66601

JUN 29 2017

RE: MUR 7258
(formerly AR 17-04)
Kansas Democratic Party and
Bill Hutton in official capacity as
treasurer

Dear Mr. Hutton:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Kansas Democratic Party and you in your official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 6, 2017, the Commission notified you that the Committee was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On June 21, 2017, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b), a provision of the Act, and 11 C.F.R. § 106.7(d)(1). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as the Committee is notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law. Enclosed is a conciliation agreement for your consideration. The basis of the Commission's civil penalty calculation is set forth below.

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If the Committee is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650 or drigsby@fec.gov, within seven days of receipt of this letter. During conciliation, the Committee may submit any factual or legal materials that it believes are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Committee is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless the Committee notifies the Commission in writing that it wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

We look forward to your response.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosures

1. Factual and Legal Analysis

1-20-11-10-10

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Kansas Democratic Party and
Bill Hutton in his official capacity
as treasurer

MUR 7258

I. INTRODUCTION

This matter was generated by a Commission audit of the Kansas Democratic Party ("Committee") covering the period of January 1, 2011, through December 31, 2012. On March 22, 2017, the Commission approved the Final Audit Report, and the Audit Division referred two findings to the Office of General Counsel ("OGC") for possible enforcement action: (1) misstatement of financial activity in 2012; and (2) recordkeeping for employees in 2011 and 2012. OGC notified the Committee of the referral; the Committee did not file a response. Based on the discussion below and the facts, analysis, and findings set forth in the Final Audit Report, which is incorporated by reference, the Commission found that there is reason to believe that the Committee violated 52 U.S.C. § 30104(b) by misstating financial activity and violated 11 C.F.R. § 106.7(d)(1) by failing to maintain monthly payroll logs.

II. FACTUAL AND LEGAL ANALYSIS

A. Misstatement of Financial Activity

The Federal Election Campaign Act of 1971, as amended, requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104(b). The Audit staff reconciled the Committee's reported financial activity with its bank records and determined that in 2012, the Committee understated its reported receipts by

\$122,088 and understated its reported disbursements by \$162,640.¹ The Committee materially corrected its misstatements during the audit process by amending the relevant reports in August 2016.² In its Final Audit Report, the Commission found that the Committee misstated financial activity by a total amount of \$284,728 in 2012.³

Based on the foregoing, the Commission found that there is reason to believe that the Committee violated 52 U.S.C. § 30104(b).

B. Recordkeeping for Employees

Commission regulations provide that State, district, and local party committees must maintain employee payroll logs. Salaries, wages, and fringe benefits “[paid] to State, district, or local party committee employees who spend 25 percent or less of their compensated time in a given month on Federal election activity or on activity in connection with a Federal election” may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds from the committee’s federal and non-federal accounts.⁴ Commission regulations also provide that when allocating salary, wage, and fringe benefit payments, political party committees are required to “keep a monthly log of the percentage of time each employee spends in connection with a

¹ See Final Audit Report at 9. The Committee’s understated receipts consisted of \$12,725 in in-kind contributions not reported as a receipt, \$66,279 in transfers from the non-federal account not reported, \$46,677 in receipts not reported, \$3,350 in reported receipts not supported by deposit documentation or credit, and \$243 in unexplained differences. *Id.* The Committee’s understated disbursements consisted of \$12,725 in in-kind contributions not reported as a disbursement, \$1,993 in Act Blue fees not reported, \$217,681 in disbursements not reported, \$68,318 in disbursements reported not supported by a check or a debit, \$300 in voided checks erroneously reported, and \$1,141 in unexplained differences. *Id.*

² *Id.* at 10.

³ See Final Audit Report at Finding 1.

⁴ 11 C.F.R. §§ 106.7(c)(1), (d)(1)(i), and (d)(2).

Federal election.”⁵ As set forth in the Final Audit Report, the Commission found that the Committee failed to maintain monthly payroll logs in the amount of \$321,560 for 2011 and 2012.⁶

Based on the foregoing, the Commission found that there is reason to believe that the Committee violated 11 C.F.R. § 106.7(d)(1).

⁵ 11 C.F.R. § 106.7(d)(1).

⁶ See Final Audit Report at Finding 2. Payroll amounts are stated net of taxes and benefits.

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